

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

RCCRev..No. 26 of 2007()

RCA.144/2005 of RENT CONTROL APPELLATE AUTHORITY & ADDL.
DISTRICT COURT-II, KOZHIKODE
RCP.26/2003 of ADDL.M.C. & RENT CONTROL COURT-II, ,KOZHIKODE
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REVISION PETITIONER (APPELLANT/RESPONDENT)

SAJEEVAN, S/O.BHASKARAN, THARAMMAL,
VALAYANAD AMSOM, KOMMERI DESOM, KOZHIKODE TALUK.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.M.HARISHARMA
SRI.T.P.ELDHOSE
SMT.O.K.SANTHA

RESPONDENTS: RESPONDENT/PETITIONER

SANTHA DEVI,D/O.KOTHAKULANGARA,MEENAKSHI
AMMA, RESIDING AT KASABA AMSOM AND DESOM,
KOZHIKODE TALUK.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION
ON 19/02/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER ON I.A.NO.249/07 IN R.C.R.NO.26 OF 2007

DISMISSED

19.2.2007

SD/- J.B.KOSHY, JUDGE.

SD/- T.R.RAMACHANDRAN NAIR, JUDGE.

// TRUE COPY //

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

R.C.R.No.26 OF 2007

Dated 19th February, 2007

ORDER

Koshy, J.

Revision petitioner is the tenant in occupation of one shop room in a building consisting of three rooms. The respondent landlord instituted proceedings for eviction of the revision petitioner from the said premises under sections 11 (2) (b) and 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965 (hereinafter referred to as "the Act"). The claim under section 11(2) (b) of the Act was rejected by the Rent Control Court as the rent was paid. The Rent Control Court as well as the appellate authority found that the need alleged by the landlord was bona fide and eviction was ordered under Section 11(3) of the Act. The respondent landlord and her husband have no other job. The respondent knows tailoring work. They want to do the tailoring work and allied business in the shop room. After considering the need, commission report and other evidence, both courts concurrently found that the need alleged is bona fide. Even though rent control authority found that there is no other building in the possession of the landlord, appellate authority found that there is a building available to the landlord, but, it is not situated near the main road and it is a residential building

which is not suitable for the business. Contention of the revision petitioner is that since the petition schedule room is a small room, it is not sufficient for doing the business as mentioned in the rent control petition. The landlord is also not in a position to set up a large scale business. They want to do some tailoring works and sell the items and it cannot be stated that putting up a tailoring shop and selling the tailored articles (ready made dress) in a residential house not facing the main road is a sufficient alternate place available to the landlord and, therefore, first proviso to section 11(3) is not attracted. Both courts concurrently found, after considering evidence, that the revision petitioner is not entitled to the benefit under the second proviso to section 11(3). We see no ground to interfere in the same.

2. It is pleaded that the revision petitioner is doing business in the petition schedule room from 1989 onwards and he wants at least one year's time for vacating the premises. We note that the appellate authority decided the matter as early as on 18th March, 2006. Almost one year is already over after judgment of the appellate authority. However, considering the facts and circumstances of the case, if the petitioner pays the entire arrears of rent, if

any, as on 31.1.2007 within two weeks and also files an affidavit within three weeks from today before the execution court that he has paid the arrears of rent, if any, as directed and he will continue to pay the agreed rent till he vacates the premises without defect and he will hand over the vacant possession of the premises on or before the expiry of five months from today, the order shall not be executed till the expiry of five months. If any of the conditions are not complied with, the respondent is free to take steps for execution.

The revision petition is dismissed with the above direction.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

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